

Response dated 06/28/2005
Reply to Office Action dated 03/09/2005

Application No. 10/001,357

REMARKS

Claims 1-49 are pending with this paper. Claims 9-11 and 19-28 are withdrawn from consideration. Claims 1, 3, 12, 15, 16, 18, and 29-38 are rejected and claims 2, 4-8, 13, 14, and 17 stand objected to. Claims 1-5 have been amended and new claims 48-49 have been added in the current response. No new matter has been introduced into the application.

Examiner Interview

Applicant would like to thank Examiner Lau for the interview. Applicant believes that they have clarified their position during the interview. Applicant respectfully submits that all pending claims are allowable over the cited references as the Office Action has failed to establish a *prima facie* case of obviousness. Applicant submits the following remarks based on the interview.

Allowable Subject Matter

Applicant would like to thank the Examiner for indicating allowable subject matter of claims 13-14, 17, 29-32, and 39-47.

In addition, the Examiner indicated that claims 2, 4, and 5-8 stand objected to as being dependent upon a rejected base claim, but would be allowable if written in independent form including all the limitations of the base claim and any intervening claims. Applicant has amended claim 2 into independent format. Applicant respectfully submits that independent claim 2 is now in condition for allowance. Claims 3-5 have also been amended to depend from independent claim 2. Applicant respectfully submits that claims 3-8 and 33-38 which ultimately depend from independent claim 2 are allowable for at least the same reason as independent claim 2.

Rejections under 35 U.S.C. §103

Claims 1, 3, and 33-38 stand rejected under 35 USC §103(a) as being unpatentable over Nappholz et al. (US Patent 5,188,106) in view of Wojcicki et al. (US Patent 5,190,522).

In the current response, Applicant has amended independent claim 1. With regard to independent claim 1, Applicant submits that Nappholz and Wojcicki fail to disclose the claimed feature of "an external acquisition device." The claimed "external acquisition device" is in bi-directional communication with implantable drug delivery device 105. The external acquisition device allows for connection to various healthcare entities to manage the treatment therapy of a

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patient. Support for the external acquisition device may be found in Paragraph 32 of the specification which states:

The external device 110 may be any computing device capable of communicating with the implantable drug delivery device 105, including for example, a physician programmer, a patient programmer, a screen device, a data acquisition device and the like.

Therefore, for at least this reason, Applicant respectfully submits that independent claim 1 is in condition for allowance.

Claims 15 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wojcicki in view of Nappholz. As will be discussed below, independent claim 12 is not taught by Wojcicki. Moreover, Nappholz does not make up for the deficiencies of Wojcicki. Because claims 15 and 18 depend from claim 12, claims 15 and 18 are patentable over Wojcicki and Nappholz.

Rejections under 35 U.S.C. §102

Claims 12 and 16 stand rejected under 35 USC §102(b) as being anticipated by Wojcicki, et al. (US Patent 5,190,522). Independent claim 12 includes the feature of "a telemetry module that receives the performance acquisition instructions, the performance acquisition instructions being stored in the memory." (Emphasis Added). Applicant respectfully submits that Wojcicki does not teach or even suggest this feature. In fact, the Office Action on Page 6 states "Wojcicki discloses a system including the subject matter discusses above except for the telemetry module." Therefore, for at least this reason claim 12 is allowable as Wojcicki does not disclose teach or suggest all claimed features of independent claim 12. In addition, Applicant respectfully submits that for the reasons discussed above in relation to independent claim 1, Nappholz also fails to disclose, teach, or suggest the claimed "telemetry module that receives the performance acquisition instructions." Claim 16 which depends from claim 12 is allowable for at least the same reason as claim 12.

New Claims 48-49

Claims 48 and 49 have been added in the current response and are believed to be in condition for allowance.

Applicant respectfully submits that the instant application is in condition for allowance. Should the Examiner believe that a conversation with Applicant's representative would be useful in

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the prosecution of this case, the Examiner is invited and encouraged to call Applicant's representative.

Respectfully submitted,

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